IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.129 OF 2002

IN

CONTEMPT PETITION NO.1 OF 1998

IN

NOTICE OF MOTION NO.395 OF 1997

IN

SUIT NO.456 OF 1997

Bharat Bhushan ...Appellant

v/s

Rank Enterprises Ltd. and ors. ...Respondents

Mr Rajesh Gehani for Appellant.

Mr P.C. Mankad i/b Mr P.D. Kadam for Respondents.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 11TH OCTOBER 2007.

P.C. :-

1. This appeal is directed against the order passed by the learned Single Judge of this Court dated 8th October 2001 in contempt petition No.1 of 1998. By that order, amongst others, the present appellant has been held guilty for committing civil contempt of this Court and he has been sentenced to undergo simple imprisonment for a period of three months and also pay fine of Rs.2,000/-. The contempt petition was filed alleging disobedience of the order passed by the learned Single Judge of this Court dated 31st July 1997. The facts in brief are that by order dated 31st July 1997, the defendant No.1 - Company by name Aravali Tubes Ltd. was directed to deposit in Court the price of twelve containers. The act of disobedience was that though by that order dated 31st July 1997 the defendant No.1 - Company was directed to deposit the price of twelve containers or furnish bank guarantee in the amount of price of twelve containers, it was not done The present appellant - Bharat Bhushan was joined as respondent No.4. In the petition it is stated that he was a Director of the defendant No.1 - company. It was also stated that pursuant to the order passed in appeal against ad-interim order passed in notice of motion

taken out by the plaintiffs, the present appellant had given an undertaking as directed by the Division Bench. When notice of contempt petition was issued to the appellant, it appears he did not dispute that he was Director of the defendant No.1 - Company at the relevant time. He however claims that he was acting under the direction of the respondent No.6 who according to him was Chairman and Managing Director of Aravali Group of companies. The explanation was not accepted by the learned Single Judge and the learned Single Judge found that the present appellant is guilty of having wilfully violated the order made by the learned Single Judge. We have heard learned counsel for both the sides. We find that there was a clear allegation made in the contempt petition that the present appellant was Director of the defendant No.1 - Company. Obviously therefore, he was bound by the order made by the Court. There is also no dispute that the order has not been complied with by the defendant No.1 - company. We also do not find a clear explanation given in the affidavits filed on behalf of the present appellant as to what steps he had taken to comply with the order passed by the Court as a Director of the defendant No.1 - Company. In our opinion, as a Director of the defendant No.1 - Company, the order was binding on the present appellant and as admittedly he was aware of that order he was under a duty to take steps to comply with the order and therefore, we do not

find any fault with the finding recorded by the learned Single Judge that he is guilty of having committed civil contempt of this Court. However, we find substance in the submission made on behalf of the appellant that the order directing him to undergo simple imprisonment for a period of three months should be set aside because though he was described as a Director of the defendant No.1 - Company, in fact he was employee of the Company and that subsequently he has ceased to be in the employment of the defendant No.1 - Company and presently he is working somewhere else. Considering that law laid down by the Supreme Court in relation to the exercise of contempt jurisdiction and the power of the Court to punish, in our opinion, it will not be in the interest of justice to maintain the order sentencing the present appellant to undergo simple imprisonment. In our opinion, interest of justice would be subserved by maintaining the finding that the appellant is guilty of having committed contempt of this Court and imposing fine of Rs.2,000/- on him. The appeal therefore partly succeeds and is allowed, the order of the learned Single Judge to undergo simple imprisonment for a period of three months is set aside, the rest of the order is maintained. Appeal is disposed off. The appellant is given eight weeks' time to deposit the amount of fine.

. Parties to act on the copy of this order duly

authenticated by the Associate / Private Secretary as

true copy.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)